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File No. Civic Guards II /42

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Legal DEPARTMENT

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Subject:

Rules and Notifications under the Civic Guards Ordinance 1940

File No. Civic Guards II/42

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SMD 29/4.

R.Y.No.11605/14.11.42.

Submitted.

Attention is invited to R.L.A's opinion No.10512 dated 8/12/41 in which the R.L.A. had advised that a rule prescribing a penalty for failure on the part of a person appointed as Civic Guard, on ceasing to be a member of the Civic Guard to deliver up his certificate, uniform and armlet was ultra vires of the Civic Guards Ordinance, 1940 (Ordinance No.VIII of 1940). The Commr. of Police, Bombay, has now reiterated his proposal to include in the City of Bombay Civic Guards Rules a provision on the lines of sec.15(2) of the Bombay City Police Act, 1902(Bom. IV of 1902). Sub-section (2) of that section empowers the Commr. of police or any Magistrate to issue a warrant to search for and seize, wherever they may be found, any certificate, accoutrements, clothing or other necessary articles not delivered which a member of the Police force on ceasing to be so has to deliver under sub-section(1). The question raised for the consideration of the R.L.A. is whether such a provision in the City of Bombay Civic Guards Rules would be intra vires of clause (c) of section 8 of the Civic Guards Ordinance 1940.

2. Clause (c) of section 8 of the Civic Guards Ordinance, 1940 empowers the Provincial Govt. to make rules consistent with the Ordinance regulating inter alia the conditions of service, discipline accoutrements and clothing of members of civil Guard. The proposed rule is intended to

operate. on the person ceasing to be a member of the C.G. and consequently it can not be framed under clause (c). Sub-rule (2) of rule 7 of the City of Bombay Civic Guards Rules however requires every person on ceasing to be a member of the C.G. forthwith to deliver to the Commissioner of Police or to such person and at such place as he may direct his certificate of appointment, uniform, armlet etc. Presumably this rule is made under the omnibus provision in clause (8) of section 8 of the Ordinance and not under clause (c) thereof. The proposed rule on the lines of section 15(2) of the City of Bombay Police Act would therefore appear to fall under clau e (e) of section 8. Rule 7(2) grants power to the Comnr. of Police to receive back the uniform etc. on a person ceasing to be a member of the C.G. in order to be able to exercise this power a provision authorising search and seizure ~~xxxx~~ would also be necessary. "Where powers and privileges are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted also" (Maxwell, p.310). The proposed rule would therefore be intra vires of the Ordinance.

2. It appears that a rule on the lines of sec.15 (3) of the City of Bombay Police Act, providing how such warrants should be executed would also be necessary.

Yd/- 17/11

S.S.

Please see office note dated the 27th November 1941 at pages 14 to 15 of File Civic Guards 77/41. Although the proposed provision would not fall under clause (c) of section 8 of Ordinance No.VIII of 1940, it would be intra vires section 8(e)..

Yd/- 17/11

Office of the R.L.A.

The proposed rule will not only give power to seize accoutrements etc. but also the power to enter and search any premises for the purpose. In the absence of a statutory provision giving such power it is doubtful if such a rule can be made under section 8 of the Ordinance. It will be more appropriate to amend the Ordinance so as to provide for the necessary rule making power. H.D. may if it thinks fit consult the Central Govt. whether the difficulty is likely to be resolved in that way.

Sd/.P.N.Moos 9/12.
Remembrancer of Legal Affairs.

U.R. to H.D.,No.9867, dated the 10th December 1942.

B.K.S. 27/4.